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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	CC Docket No. 96 - 45
Federal-State Joint Board on	)	
Universal Service	)	
	)	

COMMENTS
by
The Cleveland Municipal School District
On the Further Notice of Proposed Rule Making and Order

Introduction

These comments are filed by the Cleveland Municipal School District (Cleveland City School District, CMSD, or the District) on the Further Notice of Proposed Rule Making and Order (Notice) regarding a revised method for allocating discounts to schools and libraries under the universal service and the universal service fund (USF) mechanism when there is insufficient funding to support all requests for internal connections.

Specifically, the proposed rule change would "give funding priority request for internal connections made by individual schools...that did not receive funding commitments for internal connections during the previous funding year [Year 3]." Notice

Universal Service

Universal service (and the universal service fund) must be understood and administered in its historical context. USF support is defined as "a public policy to spread telecommunications to most members of society and to make available, directly or indirectly, the funds necessary to accomplish such a policy." Communications Law and Practice, Section 5.01[a]

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List A B C D E

The Federal–State Joint Board defined universal service as, *inter alia*, "the eligibility of carriers [telecommunications companies] to receive universal service support for high cost areas and low income customers, as well as support for schools, libraries and health care providers." In the matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 12 F.C.C. Rcd 87.

Universal service funds are collected and distributed to telecommunications carriers in high cost areas, low income customers, and suppliers of "internal connections"[1] to schools, libraries and health care providers (in rural areas)[2]. *Id.*

This Commission has clearly stated that it has a responsibility for itself in the Communications Act to " prevent degradation of universal service and the division of our society into information 'haves' and 'have nots.' " MTS and WATS Market Structure, 50 Fed. Reg. 939, 941 (1985); Communications Law and Practice, Section 5.01 [2] [b]. While the term "universal service" was not defined in the Communications Act of 1934, the Federal-State Joint Board defined universal service after the Telecommunications Act of 1996 was passed.

The Telecommunications Act of 1996 imposes very specific Universal Service legal requirements on this Commission. Section 254 states, *inter alia*, that :

...

> (b) Universal Service Principles.—The Joint Board <u>and the Commission</u> shall base policies for the preservation and advancement of universal service on the following principles:
>
> ...
>
> (5) Specific and Predictable Support Mechanisms. – There should be specific, predictable and sufficient Federal and State Mechanisms to preserve and advance universal service. [Emphasis added.]

Conference Report, Report 104-230,February 1, 1996[3]

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[1] No USF funds are directly paid to schools.

[2] The intent of universal service funding is to "encourage higher rates of application from the poorest communities and getting funds to the places with the greatest need." Findings, Doc #00-17; also, see Conference Report, 104-230, Joint Explanatory Statement of the Committee of Conference, Page 132-133, stating that universal fund support will "help open new worlds of knowledge, learning and education to all…rich and poor, rural and urban."

[3] The Commission recognized and implemented this legal requirement in its Fifth Order on Reconsideration.

And, in the Joint Explanatory Statement of the Committee of Conference, the managers on the part of the House and Senate made it clear that in the Conference agreement that:

> "...the Joint Board ...thoroughly review the existing system of Federal universal service support.
>
> ...the conferees intend that any support mechanisms continued or created under new section 254 should be explicit, rather than implicit..."

Conference Report, Joint Explanatory Statement of the Committee of Conference, *Id.* Page 131

The Commission's proposed regulation, set forth in the Notice, means that the Universal Service Fund is neither specific, predictable, nor sufficient.

The Federal–State Joint Board followed its Congressional directive and thoroughly documented what the financial requirements would be to "finance" the universal service fund to pay for telecommunications, internal connections and Internet access as it related to incorporating technology into classroom curriculum. Illustrative of the considerable resources available at the time is a white paper by McKinsey & Company, Inc for the National Information Infrastructure Advisory Council (NIIAC) (McKinsey Report); a more current white paper in effect supports the McKinsey Report. The Urban Institute report on E-Rate and the Digital Divide: A preliminary Analysis From the Integrated Studies of Educational Technology, U. S. Department of Education Office of the Under Secretary, Doc #00-17 (Urban Institute Report) demonstrates the need for increased E-Rate funding.

In examining models for providing technology in the classroom, the McKinsey Report, and to a lesser extent the Urban Institute Report, identified specific cost structures. The data from the McKinsey Report, along with other reports, strongly supports a conclusion that the universal service funding mechanism is under funded by approximately $3 billion annually. The data and findings contained in the McKinsey Report was public data available to the Commission. The Urban Institute Report data is now available to the Commission.

The universal service fund, as it relates to funding for schools and libraries, is presently under funded, the Commission has not met its legal mandate to create a sufficient funding mechanism. Moreover, if the proposed rule is adopted, the universal service fund would not be predictable. Said differently, it is patently unfair to change rules after schools have already completed the majority of their budgetary and planning processes. Rules should not be changed in the middle of the game. Furthermore, if the proposed rule is adopted, the universal service fund would not be specific. As stated below, the Congressional intent of E-rate is to focus, that is to financially aid, economically disadvantaged school districts and libraries. The Commission's actions in adopting the proposed rule would not advance the concept of universal service as required by the Telecommunications Act of 1996.

There is no question that E-Rate is focused on poor urban and rural school districts. As recognized by a current leading study, "[u]rban schools...tend to have greater concentrations of poor children and to be larger in size..." Urban Institute Report.[4] Although urban districts comprise only eight percent of all public school districts, they enroll 33 percent of all public school students. *Id.*, at Tables A.1 and 2. In contrast, rural districts, comprising nearly half of all public school districts, enroll only about 14 percent of all public school students. *Id.* And, "[w]hile the U.S. is in the forefront of the technological revolution, there are segments of our society – particularly poor and minorities – for whom access to computers [internal connections required] and the Internet is significantly lower." *Id.*

E-rate was recognized as a means of assisting in eliminating the so-called "digital divide" (the technological gap between rich and poor, black and white) because "schools and libraries...are [the] primary means of gaining access to what...new technology has to offer...in the dramatic changes in the education of the nation's children..." *Id.* Given the technological gap that currently exists between rich and poor, one could easily conclude that closing this gap is a national imperative. Having a strong technological infrastructure for our schools is crucial.

The E-Rate Issue

The FCC is faced with requests for funding that significantly exceed the current annual funding cap of $2.25 billion.

Current FCC regulations provide that funding will be allocated for telecommunications and Internet access services (priority one services) before funding is to be awarded for internal connections (priority two services). Total funding requests for priority one services for the upcoming Year 4 E-Rate are currently estimated at $1.7 billion. According to the Notice, an estimated $900 million will be available for internal connections. Funding requests for internal connections total an estimated $3.5 billion.

Applicable FCC regulations state that, in the event funding is insufficient to meet all requests within a service priority level, funding is to be disbursed by discount grade, beginning with the schools and libraries at the highest level of

[4] The data used in the analyses was provided for the Urban Institute Report by the Universal Service Administrative Company, Schools and Libraries Division.

discount (90%) and moving down, one grade at a time, until funds are depleted. In the event that funds are insufficient to honor all requests within a discount grade, funds will be disbursed *pro rata* to all applicants within the discount grade. Internal connections funding requests from schools and libraries in the 90% discount grade exceed the amount of available funding.

The FCC's Response to the E-Rate Issue

The FCC proposed in its April 30, 2001 Notice that a change in the current rules governing the distribution of E-Rate funds is required. Under the proposed new rule, funds would continue to be disbursed to all eligible applicants for priority one and two services. However, schools and libraries receiving funding for priority two services (i.e. internal connections) in the current E-Rate year would be entirely ineligible for the receipt of priority two funds in the upcoming program year.

Cleveland Municipal School District

CMSD is a very poor urban school district. In Year 1 of E-Rate, CMSD had 72,154 students. FCC Form 471, Year 1. CMSD had 127 buildings, in a substantially deteriorated condition, with 6,864 rooms. [5] In Year 1 of E-Rate, CMSD had 583 rooms with "internal connections." Based on FCC criteria for determining qualifications for universal service funding, an astounding 90% of CMSD's students are eligible for free or reduced meals. And even though E-Rate has been beneficial to CMSD students, CMSD (with 74,000 plus students in Year 4) still requires internal connections (wiring, switches, routers) for over 860 rooms. FCC Form 471,Year 4.

The Impact of the Proposed Rule Changes on CMSD

The adoption of the proposed rule changes by the FCC would be technologically disastrous for CMSD. **Of the District's total funding request for Year 4, 67.3% falls into the internal connections category**. If the proposed rule change were adopted by the FCC, the District would lose its entire priority two (internal connections) funding request for Year 4.

In essence, the denial of internal connections funding would mean that the investment paid for by E-Rate funds in prior years would be stranded. Issues of stranded investment should not be minimized by the Commission in considering the proposed rule change. If a relatively large district received substantial sums for internal connections in Year 3, that district would receive nothing in Year 4. How would that investment be maintained? Most 90% districts did not have

[5] CMSD only recently passed a bond issue allowing refurbishing of many of its buildings.

sufficient funds prior to E-Rate to purchase internal connections, let alone funds to maintain a complex wide area network. Any investments made with E-Rate funds would, therefore, be stranded, to the extent that no E-Rate funds are made available in Year 4 for internal connections. Districts disenfranchised by the new proposed rule would face yet another problem.

From the beginning of the E-Rate program, school districts were instructed to "exercise caution in signing a contract and consider including appropriate conditions which make [the district's] obligation contingent upon being approved for discounts". Program Description for the 2001-2002 Funding Year. http://www.sl.universalservice.org/data/doc/ProgramDescriptionY4.doc Thus, districts filed Year 4 FCC 471 Forms seeking telecommunications services (*e.g.*, T-1s, DS1s, fiber, etc.) with enough capacity to support their internal connections requirements. As the Commission now proposes not to provide priority two funding for those 90% districts, those districts are left financially liable for telecommunications services (priority one services for which funding was awarded) without a financial ability to install and maintain the internal connections necessary to support those services. The proposed rule change directly financially harms school districts simply for following the recommendations of the Schools and Libraries Division (SLD).

CMSD's Response to the Proposed Rule Change

CMSD opposes the proposed rule change.

The proposed change is patently unfair at its base and represents a change in E-Rate distribution rules that is inconsistent with the principle of universal service generally, and with the specific requirements of universal service in the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

Although the FCC has proposed only two potential responses to the current funding crisis, there are important alternatives.

Option One: Raise the Funding Cap for the E-Rate Program Year

The current funding cap of $2.25 billion is clearly insufficient to meet the demand of poor schools and libraries. At the onset of the E-Rate program, the Federal-State Joint Board, citing specific studies, indicated that a funding cap of "approximately $3.1 - $3.4 billion annually during an initial four year deployment period..." was required. In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, Rel. Nov. 8, 1996. It would appear now that those studies relied upon by the Federal-State Joint Board were largely accurate. The best possible option for all schools and libraries applying for E-Rate funding would be to increase the annual program cap to a minimum of $3.4 billion, up to a more realistic cap of $5 billion or more for Year 5. This recommendation is based on current demand, and the overall purpose of universal service.

The raising of the E-Rate funding cap can be accomplished without additional cost to ratepayers nationwide. Reportedly, the universal service fee charged to consumers for the use of telecommunications services generates an annual amount in excess of the current E-Rate funding cap of $2.25 billion. The excess funds are returned to the collecting telecommunications carriers. While the FCC adjusts contributions periodically, funds are still returned to carriers, but, to the best of the District's knowledge, those funds have not been returned to the rate paying public.

Option Two: Retain Current Regulations

A less desirable alternative is the Commission's option to retain the current rules regarding E-Rate fund disbursement. If the existing rules were retained, CMSD and other, similarly situated school districts would receive a prorated portion of the available funds for internal connections for Year 4. While this is an insufficient level of funding to continue to improve the CMSD network services provided to students for purposes of further integrating technology into curricula, it would, at least, allow CMSD to maintain its existing network (and not strand the E-Rate dollars invested to date in internal connections) and make minimal network improvements.

Conclusion

As stated by the Federal-State Joint Board, "[T]he gap between access to telecommunications services afforded to rich and poor students continues to widen." Recommended Decision, para. 525. If CMSD were to receive no funding from the FCC for internal connections, the primary victims would be the students of this 90% district.

A decision to expand the annual funding cap, or at least keep the current rules in place, would appear to be supported by an American public that knows the importance of technology in the classroom. "[A] 1999 survey of 1,000 American households (EdLiNC, 2000) found that 87 percent support the use of public funds to help needy schools and libraries obtain needed technology ..." *Doc#00-17, p.22.* Also, "in a national household poll, 87 percent of respondents support the introduction of information technology into American schools." *Id., 26.*

It must also be remembered that the benefits of E-Rate are not simply a matter of receiving funds to integrate technology into curricula. E-rate discounts generally help drive technology investments. E-Rate "discounts ... help expand overall investments in technology by allowing schools ... to reinvest the savings in other important technology needs, and have helped attract new sources of technology funds..." *Id, 26.*

To meet the requirements of the Telecommunications Act of 1996, the Cleveland Municipal School District strongly recommends that the FCC either:

1. **Increase funding to levels that meet the needs of economically disadvantaged schools and libraries, or**

2. **Keep the current rule and distribute funds on a *pro rata* basis.**

Respectfully submitted,

The Cleveland Municipal School District

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May 22, 2001

Michael K. Powell
Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

Dear Chairman Powell:

On behalf of the Cleveland Municipal School District, I am writing in opposition to the Commission's proposed change in the rule governing the manner in which universal service fund discounts are distributed. If adopted by the Commission, the rule change would irreparably damage the efforts of this District to integrate technology into the educational experiences of our children. I am opposing the rule change on the following grounds, all of which are presented in detail in the District's formal comments:

1. The rule change is inherently inequitable, arbitrarily penalizing school districts for their past participation in the "E-Rate" program. Although the Commission's aim of expanding the benefits of this program to the many schools that have not yet participated is a noble one, that goal should not be accomplished at the unacceptably high cost of undermining the programmatic gains of the past three years.

2. The rule change directly harms those school districts in greatest need of the E-Rate program's assistance. As students in a 90 percent discount eligible school district, our 77,000 children are among the most disadvantaged in the United States where access to technology is concerned.

3. The rule change is proposed at a time when it is too late in the budgetary and planning processes of the District to realistically hope to find funding alternatives. With a preliminary budget already in place, and a major facilities infrastructure program about to begin, Cleveland does not have the resources available to maintain its wide area network during an E-Rate "off year".

4. Finally, I believe the proposed rule change is inconsistent with the general principal of universal service, as well as with the specific universal service requirements of the Telecommunications Act of 1996. The universal service funding mechanism should be "specific, predictable and sufficient". Under the Commission's proposed rule change, it would be none of those things.

Mr. Chairman, E-Rate was a promise to millions of disadvantaged children across the United States that they would not be left behind as this, the greatest nation in the world, entered the information age. It was a promise to the 77,000 children of the Cleveland Municipal School District that they would not be technology "have nots"; that they would not be abandoned on the wrong side of the digital divide or, worse yet, that they would be forsaken now as they are halfway across that divide. Please, Mr. Chairman, keep the promise of E-Rate by defeating this proposed rule change.

Sincerely,

Mark J. Hogan

Mark J. Hogan
Interim Executive Director,
Management Information Services

Cc: Barbara Byrd-Bennett, Chief Executive Officer
Lisa M. Ruda, Chief of Staff